

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of)
)
The Wireless Communications Bureau) CC Docket No. 94-102
request for comment on an emergency)
Ruling filed regarding wireless)
Enhanced 911 rulemaking)
proceeding)

COMMENTS OF GTE

Dated: August 14, 1998

GTE Service Corporation and its affiliated
domestic telephone operating, wireless, and
long distance companies

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COMMENTS OF GTE

GTE Service Corporation and its affiliated domestic telephone operating, wireless, and long distance companies¹ (collectively, "GTE") respectfully submit their comments on the emergency declaratory ruling filed by the State of California 911 Program Manager ("Declaratory Ruling")² in the captioned proceeding.³ In the Declaratory Ruling, the Program Manager seeks an FCC ruling on limitations of liability for wireless carriers offering E911 Phase I service and related matters.

¹ These comments are filed on behalf of GTE's affiliated domestic telephone operating companies, GTE Wireless Incorporated, and GTE Communications Corporation, Long Distance Division. GTE's domestic telephone operating companies are: GTE Alaska Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., and Contel of the South, Inc.

² Letter to FCC from Leah A. Senitte, 9-1-1 Program Manager, State of California, dated July 20, 1998 requesting an emergency declaratory ruling.

³ FCC DA 98-1504.

I. BACKGROUND

The Commission established in this proceeding that wireless carriers must provide by April 1, 1998 the telephone number of the E911 caller and the location of the cell site or base station receiving a E911 call from any mobile handset accessing their systems to the designated Public Safety Answering Point (PSAP) through the use of Automated Number Identification ("ANI") and Pseudo-ANI.⁴ This Phase I requirement is applicable only if the administrator of a designated PSAP has requested the service, the PSAP is capable of receiving and utilizing the data elements, and a mechanism for recovering the costs of the service is in place.⁵

The California 911 Program Manager poses the following questions:

1. Do carriers have an obligation to deploy wireless E911 service (Phase I) in California despite the fact that State statutes do not provide immunity from liability for E911 service provided?
2. If carriers are obligated to deliver Phase I service without immunity from liability (either statutory or contractual), is the State required under the Commission's cost recovery mandate to reimburse carriers for the cost of insurance policies covering their provision of wireless E911 service?
3. Regarding selective routing, what is meant in the Commission's E911 First Report and Order by the reference to "appropriate PSAP"?

Although the Commission's rules do not currently condition the requirement to

⁴ 47 C.F. R. § 20.18(d)(1)

⁵ 47 C.F.R. § 20.18 (f)

provide E911 on whether a state has immunity protection in place, GTE urges the Commission to clarify that wireless carriers are not obligated to deploy wireless E911 until the state has addressed the liability issue. Alternatively, the Commission should clarify that if a state chooses not to provide wireless carriers with immunity protection, the cost of insurance must be recognized as fully recoverable under the Commission's cost recovery mandate.

II. THE COMMISSION SHOULD RECOGNIZE THAT WIRELESS CARRIERS MUST BE PROVIDED IMMUNITY

The Commission has acknowledged wireless carriers' concerns with potential liability associated with providing E911.⁶ The Commission has declined, however, to establish a national standard of liability protection based on the belief that states are addressing liability issues in state legislative bodies and state courts.⁷ Currently, thirty three states have enacted statutory provisions granting CMRS carriers immunity on E911 calls.

Where states have not resolved the liability issue, CMRS carriers face the difficult task of providing a public safety service to the public at large, while at the same

⁶ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Memorandum Opinion and Order (1997), at ¶ 139.

⁷ *Id.* at ¶ 138.

time assuming the risk of unlimited liability attached to providing the service.⁸ This expectation is tantamount to requiring wireless carriers to become self-insurer of last resort for all crimes, accidents, and disasters whenever an E911 call is made.

Unlike wireless carriers in states without immunity protections, public safety agencies such as police, fire, and ambulances are typically immune from liability in connection with the provision of 911 emergency service. In California, for example, emergency service providers such as the police are not liable to plaintiffs injured by the acts of third parties unless the police increased the risk of harm to the plaintiff. Moreover, wireless carriers do not have the protections afforded by tariffs that limit liability, nor do customer service agreements adequately protect carriers from unlimited liability.

Despite wireless carriers' best engineering efforts, CMRS technology is still subject to external conditions beyond the carrier's control. For example, CMRS is vulnerable to environmental, geographical, and topographical conditions, as well as landline cable cuts, natural disaster, etc. Given that these conditions are difficult to control, and that additional technology and networking interfaces are necessary to implement Phase I service, subjecting a CMRS carrier to potential litigation every time an E911 call did not go through would be unreasonable.

⁸ In GTE's reply comments for CC Docket No. 94-102, April 1, 1998, page 11. GTE supported BellSouth's request that the FCC amend Section 20.18 of its rules "to make clear that wireless providers are not obligated to provide E 911 within a state until the state limits the liability of wireless providers regarding the provision of E 911 service." (BellSouth Petition at 7).

Furthermore, carriers have implemented multiple different technologies to provide E911 services. The Commission deliberately did not mandate any one particular technology, but instead permitted carriers to deploy E911 using technology most compatible with their networks. It would be unreasonable to allow plaintiffs to allege that a carrier should have used one method instead of another, not only because such an argument would be speculative, but also because the Commission did not provide carriers with guidelines on technology.

For the above reasons, GTE urges the Commission to clarify that wireless carriers are not obligated to deploy wireless E911 until the state has addressed the liability issue.

III. THE COST OF LIABILITY INSURANCE SHOULD BE RECOVERABLE

If a state does not act to protect wireless carriers from unlimited liability, the only other means that CMRS carriers would have to protect themselves would be to procure insurance to immunize themselves against lawsuits arising out of the provision of E911 service. Like costs incurred to deploy software and hardware, the procurement of insurance is a legitimate and direct cost associated with the deployment of E911. GTE asserts that the cost of insurance should be a recoverable element from state E911 funds. Furthermore, while the procurement of insurance for E911 is an important business option that carriers can consider in limiting their liability for full market deployment, it is not a prerequisite for proceeding with a field trial.

IV. GTE WILL ROUTE CALLS TO THE APPROPRIATE PSAP AS DIRECTED BY THE STATE OF CALIFORNIA.

One of the intentions of the FCC in the E911 rulemaking proceeding was to reduce the number of call handoffs, thereby reducing the time to connect a call to the desired agency and minimize lost calls. The Commission sought to accomplish this by routing calls to a PSAP in the geographic location where the call was placed. The Commission, however, left to the states the designation of appropriate PSAP.

In California, Section 2982 of the California Public Utilities Code requires all cellular calls to be routed to the California Highway Patrol ("CHP"). Furthermore, the California statute can be interpreted to apply only to cellular carriers, and it does not by its terms include other wireless carriers such as Personal Communications Services ("PCS").

GTE intends to route calls as directed by the Telecommunications Division, Department of General Services, State of California. GTE believes that routing of calls via a router to the designated PSAP in the geographical area is in the public interest. Sending all calls to the CHP will result in many handoffs before reaching the designated PSAP. Routers for the most part are in place and can be implemented quickly to route calls based on geographic location and coverage area of the cell site. While the Commission should not preempt state PSAP routing mandates, the Commission should encourage states to route calls to PSAPs that will result in the least amount of handoffs.

V. CONCLUSION

GTE believes that wireless carriers should have limited liability in providing E911 service, and if limited liability is not available the companies have a right to recover their

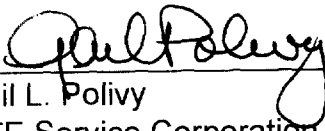
cost for liability insurance from the state E911 fund. GTE also believes that the Commission should encourage states to direct all E911 calls to the appropriate PSAP.

Dated: August 14, 1998

Respectfully submitted,

GTE Service Corporation and its affiliated domestic telephone operating, wireless, and long distance companies

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